

Aaron D. Shipley (NSBN 8258)
Rory T. Kay (NSBN 12416)
MCDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
ashipley@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANDREW GOLDBERGER, an
individual;

Plaintiff,

vs.

SMARTCAREOS, LLC, a Delaware
limited liability company; SMART
TUITION HOLDINGS, LLC, a
Delaware limited liability company;
LYRICAL PARTNERS, L.P., a
Delaware limited partnership; DOES 1
through 10; ROE ENTITIES 11 through
20, inclusive,

Defendants.

CASE NO.: 2:16-cv-01884-RFB-NJK

**1. STATUS REPORT REGARDING
DISCOVERY PLAN;**

**2. REQUEST FOR STAY OF DISCOVERY;
AND**

**3. PROPOSED DISCOVERY PLAN AND
SCHEDULING ORDER FOLLOWING STAY
OF DISCOVERY**

**[SPECIAL SCHEDULING REVIEW
REQUESTED]**

Pursuant to the Court's November 18, 2016 Order (Dkt. 21), Fed. R. Civ. P. 26(f), and Local Rule 26-1, plaintiff Andrew Goldberger ("Plaintiff") and defendants SmartCareOS, LLC, Smart Tuition Holdings, LLC and Lyrical Partners, L.P. (collectively, "Defendants"), through their respective undersigned counsel, hereby submit this Status Report Regarding Discovery Plan, Request for Stay of Discovery, and Proposed Discovery Plan and Scheduling Order.

I. STATUS REPORT AND REQUEST FOR STAY OF DISCOVERY

1. On September 30, 2016, Defendants SmartCareOS, LLC, Smart Tuition Holdings, LLC, and Lyrical Partners, L.P. filed a Motion to Dismiss (Dkt. 14) (the "Motion") pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6). Specifically, Defendants argued that Lyrical Partners, L.P. should be dismissed for lack of personal jurisdiction and that Plaintiff failed to state claims upon

which relief can be granted.¹ Plaintiff opposed the Motion (Dkt. 19), arguing the contrary. The Motion has been fully briefed (*see* Dkt. 20-) and the parties await the Court's decision. While the parties have differing views on the merits of the Motion, the parties agree that the outcome of the Motion may have an impact on which parties are subject to discovery and on the scope of discovery.

2. Since the filing of this Action and the Motion, the parties have engaged in some preliminary settlement negotiations. The parties are currently working towards scheduling an informal settlement conference and possibly a mediation. The parties currently wish to focus their efforts and resources on resolution and wish to avoid incurring unnecessary expenses associated discovery.

3. Given that a decision on the Motion may impact the scope of the discovery, and given the parties desire to explore resolution while avoid incurring unnecessary expenses that may inhibit efforts at resolution, the parties wish to stay the commencement of discovery for 60 days.

4. Therefore, based upon these reasons, which the parties submit constitute good cause, they hereby stipulate to stay the commencement of discovery for 60 days and propose the Stipulated Discovery Plan and Scheduling Order below.

5. Defendants reserve the right to seek a further stay if, within the 60 day stay period, the parties are unable to resolve this matter and the Court has not decided the Motion.

III. INFORMATION PURSUANT TO FED. R. CIV. P. 26(f)

1. **Rule 26(f) Conference:** On October 31, 2016 the parties participated in a conference to discuss issues required by Fed. R. Civ. P. 26(f). Counsel for Plaintiff, Aaron D. Shipley, Esq., and counsel for Defendants, Joshua M. Dickey, Esq., participated in the conference.

2. **Rule 26(a) Disclosures:** The parties will exchange the initial disclosures required by Fed. R. Civ. P. 26(a), on or before **January 22, 2017**.

¹ Pursuant to Rule 12(b)(6), Defendants moved to dismiss all Plaintiff's claims except the Fifth Cause of Action. (*See* Dkt. 14 at 1 n.1.)

1 3. **Discovery**: Subject to the proposed stay, the parties agree that discovery should
2 extend to the full extent allowed by the Federal Rules of Civil Procedure and that discovery
3 should not be limited to any particular issues. As noted below, discovery will be completed on
4 or before **July 22, 2017**.

5 4. **Electronically Stored Information**: All discoverable information, including
6 discoverable information stored on electronic media, in existence will be preserved for
7 disclosure. The parties are already preserving their discoverable information.

8 5. **Claims of Privilege or of Protection**: The parties agree that any inadvertent
9 disclosure of any privileged or trial-preparation materials shall not result in the waiver of any
10 associated privilege nor result in a subject matter waiver of any kind. The parties agree,
11 however, that the disclosure of any particular material shall cease to be “inadvertent” if, 3 days
12 after the receiving party notifies the producing party that it has received the material, the
13 producing party does not request the return of the privileged matter. The parties agree to return
14 any privileged material inadvertently disclosed immediately upon notice of the disclosure. The
15 parties agree that no copies of the inadvertently disclosed materials will be made or kept by the
16 receiving party. These provisions shall not be deemed to prevent any party from seeking an
17 order compelling production of any material, including material returned as a result of a claim of
18 inadvertent disclosure.

19 6. **Limitations on Discovery**: Subject to the proposed stay, the parties do not
20 currently anticipate a need to suspend or change the limitations on discovery imposed by the
21 Federal Rules of Civil Procedure and the Local Rules.

22 7. **Other Orders**: Subject to the Court’s decision on the Motion and any potential
23 request for further stay, the parties do not currently anticipate a need for additional orders.

24 8. **Settlement**: As reflected above and in accordance with Fed. R. Civ. P. 26(f),
25 counsel for the parties discussed settlement. At this time, none of the parties’ settlement efforts
26 were or have been successful.

27 ///

28 ///

1 **IV. INFORMATION PURSUANT TO LOCAL RULE 26(b)**

2 The parties propose to the Court the following discovery plan and scheduling order
3 deadlines:

4 6. **Discovery Cut-Off Date:** Discovery will be complete on or before **July 21,**
5 **2017**, one hundred eighty (180) days after the stipulated stay expires.

6 7. **Amendment of Pleadings and Adding Parties.** Amendment of Pleadings and
7 Adding Parties shall be no later than **April 22, 2017**, ninety (90) days before the close of
8 discovery.

9 8. **Expert Disclosures.** Initial expert disclosures shall be due no later than **May 22,**
10 **2017**, sixty (60) days before the discovery cut-off date. Rebuttal expert disclosures shall be due
11 no later than **February 27, 2017**, thirty (30) days after the disclosure of initial experts.

12 9. **Interim Status Report.** Pursuant to Local Rule 26-3, the deadline for filing the
13 Interim Status Report shall be due no later than **May 22, 2017**, sixty (60) days before the
14 discovery cut-off date.

15 10. **Dispositive Motions.** The deadline for filing dispositive motions shall be **August**
16 **20, 2017**, thirty (30) days after discovery cut-off date.

17 11. **Pretrial Order.** The deadline for filing the Joint Pretrial Order shall be
18 **September 19, 2017**, thirty (30) days after the date set for filing dispositive motions. In the event
19 dispositive motions are filed, however, the date for filing a Joint Pretrial Order shall be
20 suspended until thirty (30) days after the decision regarding any dispositive motions or upon
21 further order of the Court.

22 12. **Alternative Dispute Resolution.** The Parties certify that they have met and
23 conferred about the possibility of using alternative dispute-resolution.

24 13. **Alternative Forms of Case Disposition.** The Parties certify that they have
25 considered consent to trial by a magistrate judge under 28 U.S.C. § 636(c) and Federal Rule of
26 Civil Procedure 73, and the use of the Short Trial Program (General Order 2013-01).

27 ///

28 ///

14. **Electronic Evidence.** The Parties certify that they discussed whether they intend to present evidence in electronic format to jurors for the purposes of jury deliberations. The Parties stipulate that they will provide discovery in Portable Document Format (PDF), an electronic format compatible with the court's electronic jury evidence display system.

DATED this 23rd day of November, 2016.

McDONALD CARANO WILSON LLP

BAILEY KENNEDY

/s/ Aaron D. Shipley

Aaron D. Shipley, Esq.
Rory T. Kay, Esq.
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
ashipley@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Plaintiff

/s/ Joshua M. Dickey

John R. Bailey, Esq.
Joshua M. Dickey, Esq.
Paul C. Williams, Esq.
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
JBailey@BaileyKennedy.com
JDickey@BaileyKennedy.com
PWilliams@BaileyKennedy.com
*Attorneys for Defendants SmartCareOS, LLC,
Smart Tuition Holdings, LLC and Lyrical
Partners, L.P.*

IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: November 29, 2016